

ESTTA Tracking number: **ESTTA570727**

Filing date: **11/13/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Blackbird Technologies, Inc.
Granted to Date of previous extension	11/13/2013
Address	13900 Lincoln Park DriveSuite 400 Herndon, VA 20171 UNITED STATES
Attorney information	Taylor Johnson Senior Corporate Counsel 13900 Lincoln Park DriveSuite 400 Herndon, VA 20171 UNITED STATES tjohnson@blackbirdtech.com, mrobinson@blackbirdtech.com

### Applicant Information

Application No	85358651	Publication date	07/16/2013
Opposition Filing Date	11/13/2013	Opposition Period Ends	11/13/2013
Applicant	Allen-Vanguard Corporation 2400 St Laurent Boulevard Ottawa, CAX K1G6C4 CAX		

### Goods/Services Affected by Opposition


Class 009. First Use: 0 First Use In Commerce: 0


All goods and services in the class are opposed, namely: Vehicle mounted electronic recording devices, containing sensors to record datafor measuring high energy events, such as those that can be generated from a) explosive blasts arising from land mines or improvised explosive devices, b) vehicular impacts and collisions which can cause sudden motion, and generated impulsive loads on personnel, c) translation, namely, the relationship between the movement of the vehicle and the people inside the vehicle, and the impact of personnel with vehicular internal surfaces or other personnel, d) sudden loads that can be imparted from kinetic or ballistic impacts experienced by the vehicle whichmay be penetrating or non-penetrating, and other such high energy deposition events which can result in impulsive loadsto the occupants


### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4126144	Application Date	06/28/2010
Registration Date	04/10/2012	Foreign Priority Date	NONE
Word Mark	BLACKBIRD		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 037. First use: First Use: 1999/04/00 First Use In Commerce: 1999/04/00 Installation and maintenance of computer and communications network hardware used in the wireless telecommunications field</p> <p>Class 041. First use: First Use: 2000/08/00 First Use In Commerce: 2000/08/00 Language translation and interpretationservices; security training services inthe field of government and homeland security information; security training others in the locating, mapping, navigating and monitoring the position or status of persons or goods for security and investigatory purposes</p> <p>Class 042. First use: First Use: 1999/04/00 First Use In Commerce: 1999/04/00 Custom development of computer softwareand hardware for others; research and development for others in the fields of software, hardware, operating systems, and wireless communications used in locating, mapping, navigating and monitoring the position or status of persons or goods installation, maintenance, and supportservices for computer software and communications network software used in the wireless telecommunications field; Communications services, namely, developing, implementing, integrating and monitoringsecure communication networks for others, namely, design and development of security systems and contingency planning for information systems, developing and implementing customized plans for improving security and preventing criminal activity for businesses and governmental agencies, integration of computer communication systems and networks, computer monitoring tracking hardware performance andprocesses which sends out historical reports and alerts; Consulting services inthe field of computer security; Consultation in the field of secure computer networking, information assurance and identity and access management, namely, consulting in the field of secure computer network integration</p> <p>Class 045. First use: First Use: 2000/08/00 First Use In Commerce: 2000/08/00 Consulting services in the field of national security; Consultation in the field of secure information assurance and identity and access management, namely, on-line monitoring to prevent illegal filessharing and providing electronic reports regarding attempts at illegal file sharing in connection therewith on networksworldwide</p>		
U.S. Registration	4126143	Application Date	06/28/2010

No.			
Registration Date	04/10/2012	Foreign Priority Date	NONE
Word Mark	BLACKBIRD TECHNOLOGIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2006/10/00 First Use In Commerce: 2006/10/00</p> <p>Computer software for communication and visualization functions between mobile communications devices for use in surveillance, military and government operations; computer software for locating, mapping, navigating, and monitoring the position and status of persons or goods for use in surveillance, military and government operations; personal digital assistants, namely, PDAs for use in surveillance, military and government operations; mobile communication devices and cellular communication devices, namely, communication transmitters for use in surveillance, military and government operations; radio frequency identification (RFID) tags and readers; devices for mapping, navigating, and monitoring the position and status of persons or goods, namely, automated self contained electronic surveillance devices that can be deployed to support government operations in remote locations, and sensors for use in military, law enforcement, civil, scientific and industrial applications; portable electronic surveillance tags and tagging equipment incorporating global positioning system transmitters and receiver</p>		

U.S. Registration No.	2389589	Application Date	06/03/1999
Registration Date	09/26/2000	Foreign Priority Date	NONE
Word Mark	BLACKBIRD TECHNOLOGIES		
Design Mark			
Description of Mark	The mark consists of a design of a black bird in flight with the name "BLACKBIRD TECHNOLOGIES " beneath.		
Goods/Services	Class 042. First use: First Use: 1998/11/12 First Use In Commerce: 1999/04/28		

	Security consulting services, namely, physical, infrastructure, building and personal security, computer security consultation services, namely, consulting in the field of computer network protection against hacking
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U.S. Registration No.	2348587	Application Date	06/03/1999
Registration Date	05/09/2000	Foreign Priority Date	NONE
Word Mark	BLACKBIRD TECHNOLOGIES, INC.		
Design Mark	<b>BLACKBIRD TECHNOLOGIES, INC.</b>		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1997/06/18 First Use In Commerce: 1999/04/28 Security Consultation services, namely, physical, infrastructure, building and personal security; computer security consultation services, namely, consulting in the field of computer and network protection against hacking		

Attachments	85072671#TMSN.jpeg( bytes ) 85072666#TMSN.jpeg( bytes ) 75719948#TMSN.gif( bytes ) 75719947#TMSN.gif( bytes ) Blackbird Technologies, Inc. - Notice of Opposition to Allen Vanguard Blackbird Trademark Application 11.13.13.pdf(285452 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Jack Kerrigan/
Name	Jack Kerrigan
Date	11/13/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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<b>BLACKBIRD TECHNOLOGIES, INC.</b>	)	In the Matter of Application
Opposer,	)	Serial No. 85,358,651
v.	)	Mark: BLACKBIRD
<b>ALLEN VANGUARD CORPORATION</b>	)	Publication Date: 7/16/2013
Applicant.	)	

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**NOTICE OF OPPOSITION**

Blackbird Technologies, Inc., a Virginia corporation, located and doing business at 13900 Lincoln Park Drive Suite 400, Herndon, VA 20171 (hereinafter “**Opposer**”), believes that it will be damaged by the registration of the mark BLACKBIRD shown in Trademark Application Serial No. 85/358651 in Class 9, filed by Allen Vanguard Corporation (hereinafter “**Applicant**”), a Canadian corporation, located and doing business at 2400 St. Laurent Boulevard, Ottawa, Canada, K1G6C4.

The grounds for opposition are as follows:

1. Commencing long prior to Applicant’s filing date, Opposer has been engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of hardware and software products and services, including, without limitation; (i) highly portable and ruggedized electronic devices (vehicle mounted and hand-carried) containing sensors that record data such as the position, movement, and status of vehicles and persons; (ii) security


training services for monitoring the position and status of goods and equipment; and (iii) consulting services; in each case, to military, intelligence, national security and law enforcement customers and for the purpose of performing surveillance and reconnaissance tasks with respect to detecting threatening events, such as hostile forces, fire, and explosions and blasts. Opposer is now one of the most highly recognized providers of mobile electronic tagging, tracking, and locating devices and visualization solutions used to record data to monitor the position, movements and status of persons and ground vehicles in the United States Government contracting industry.

2. Commencing long prior to Applicant's filing date, Opposer has used, and is now using, Opposer's registered BLACKBIRD TECHNOLOGIES and BLACKBIRD trademarks in connection with its offerings described above, including hardware devices mounted on military vehicles in theatre to report position and status, as well as a wide range of other related goods and services distributed and sold by the Opposer in commerce to military, intelligence, security and commercial customers. Since a date long prior to Applicant's filing date, the registered marks BLACKBIRD and BLACKBIRD TECHNOLOGIES have been identified with Opposer and have appeared on a significant amount of advertising and marketing material, including on those directed towards United States military customers.

3. Opposer is the owner of, and will rely herein upon, the following Federal Trademark registrations:

MARK	REG. NO.	ISSUE DATE	GOODS & SERVICES (FIRST USE)
BLACKBIRD	4,126,144	April 10, 2012	Installation and maintenance of computer and communications network hardware used in the wireless telecommunications field. (First Use April 1999)  Custom development of computer software and hardware for others;

		<p>research and development for others in the fields of software, hardware, operating systems, and wireless communications used in locating, mapping, navigating and monitoring the position or status of persons or goods installation, maintenance, and support services for computer software and communications network software used in the wireless telecommunications field; Communications services, namely, developing, implementing, integrating and monitoring secure communication networks for others, namely, design and development of security systems and contingency planning for information systems, developing and implementing customized plans for improving security and preventing criminal activity for businesses and governmental agencies, integration of computer communication systems and networks, computer monitoring tracking hardware performance and processes which sends out historical reports and alerts; Consulting services in the field of computer security; Consultation in the field of secure computer networking, information assurance and identity and access management, namely, consulting in the field of secure computer network integration. (First Use April 1999)</p> <p>Language translation and interpretation services; security training services in the field of government and homeland security information; security training others in the locating, mapping, navigating and monitoring the position or status of persons or goods for security and investigatory purposes. (First Use August 2000)</p> <p>Consulting services in the field of national security; Consultation in the field of secure information assurance and identity and access management, namely, on-line monitoring to prevent illegal file sharing and providing electronic reports regarding attempts at illegal file sharing in connection</p>
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			therewith on networks worldwide. (First Use August 2000)
BLACKBIRD TECHNOLOGIES	4,126,143	April 10, 2012	Computer software for communication and visualization functions between mobile communications devices for use in surveillance, military and government operations; computer software for locating, mapping, navigating, and monitoring the position and status of persons or goods for use in surveillance, military and government operations; personal digital assistants, namely, PDAs for use in surveillance, military and government operations; mobile communication devices and cellular communication devices, namely, communication transmitters for use in surveillance, military and government operations; radio frequency identification (RFID) tags and readers; devices for mapping, navigating, and monitoring the position and status of persons or goods, namely, automated self contained electronic surveillance devices that can be deployed to support government operations in remote locations, and sensors for use in military, law enforcement, civil, scientific and industrial applications; portable electronic surveillance tags and tagging equipment incorporating global positioning system transmitters and receiver. (First Use October 2006)
	2,389,589	September 26, 2000	Security consulting services, namely, physical, infrastructure, building and personal security, computer security consultation services, namely, consulting in the field of computer network protection against hacking. (First Use November 1998)
BLACKBIRD TECHNOLOGIES, INC.	2,348,587	May 9, 2000	Security Consultation services, namely, physical, infrastructure, building and personal security; computer security consultation services, namely, consulting in the field of computer and network protection against hacking. (First Use June 1997)



(collectively, “Opposer’s Registered Marks”). The above registrations of Opposer’s Registered Marks are valid, subsisting, and conclusive evidence of Opposer’s exclusive right to use Opposer’s Registered Marks in commerce on the goods and services specified in said registrations.

4. Opposer has made substantial investment in advertising and promoting their goods and services under Opposer’s Registered Marks since their initial use. Opposer has extensively used, advertised, promoted and offered Opposer’s goods and services bearing Opposer’s Registered Marks to the public through various channels of trade in commerce, with the result that Opposer’s customers and the public in general have come to know and recognize Opposer’s Registered Marks and associate the same with Opposer and/or the goods and services sold by Opposer.

5. Over the last ten (10) years, Opposer has sold millions of dollars worth of products and services in connection with the Opposer’s Registered Marks. By virtue of its sales success, and extensive marketing and promotional efforts, Opposer’s BLACKBIRD trademark has long enjoyed strong brand recognition and distinctiveness which has resulted in a highly favorable reputation and goodwill among the trade and consumers as identifying high quality products and services manufactured and exclusively sold by Opposer.

6. As a result of the aforesaid use, advertising and promoting, Opposer’s Registered Marks are famous and distinctive and became famous and distinctive well prior to the Applicant’s filing and/or well prior to Applicant’s actual use or intended use of the mark for which Applicant applied. Opposer’s Registered Marks have acquired and now possess an extremely favorable reputation and distinctiveness with an invaluable amount of goodwill,

signifying Opposer as the source of high quality hardware and software solutions and service offerings.

7. Applicant filed Trademark Application Serial No. 85/358651 for the mark BLACKBIRD for “Vehicle mounted electronic recording devices, containing sensors to record data for measuring high energy events, such as those that can be generated from a) explosive blasts arising from land mines or improvised explosive devices, b) vehicular impacts and collisions which can cause sudden motion, and generated impulsive loads on personnel, c) translation, namely, the relationship between the movement of the vehicle and the people inside the vehicle, and the impact of personnel with vehicular internal surfaces or other personnel, d) sudden loads that can be imparted from kinetic or ballistic impacts experienced by the vehicle which may be penetrating or non-penetrating, and other such high energy deposition events which can result in impulsive loads to the occupants” in International Class 9.

8. Opposer has priority over Applicant because its use, application filing dates and/or registration dates for Opposer’s Registered Marks long precede Applicant’s filing date for its application.

9. Registration of the BLACKBIRD mark is barred by the provisions of Section 2(d) of the Lanham Act because the said mark consists of or comprises a mark which so resembles a mark previously registered in the United States Patent and Trademark Office and/or used in the United States by Opposer and not abandoned, as to be likely, when used in connection with the alleged goods of the Applicant, to cause confusion, mistake or deception.

10. Applicant’s alleged mark BLACKBIRD is identical to parts of some of Opposer’s Registered Marks and identical to the whole of others.

11. Applicant's alleged mark BLACKBIRD so resembles Opposer's Registered Marks and is likely to cause confusion, to cause mistake or to deceive. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of Applicant's mark BLACKBIRD with Opposer's use and registration of Opposer's Registered Marks is that persons, particularly those who work for or otherwise represent or contract with the United States Government, are likely to believe that Applicant's devices, which are allegedly named BLACKBIRD and are targeted for use, distribution, and sale within the United States Government contracting industry, are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not. Accordingly, registration of Applicant's mark BLACKBIRD is barred by the provisions of Sections 2(a) and 2(d) and Section 43(a) of the Lanham Act.

12. Further, Opposer's distinctive BLACKBIRD Marks became well known long prior to the filing date of Application Serial No. 85/358651 and the registration and use of Applicant's mark BLACKBIRD is likely to dilute the distinctive quality of Opposer's Registered Marks. Accordingly, Applicant's alleged mark BLACKBIRD is not entitled to registration under Section 43(c) of the Lanham Act.

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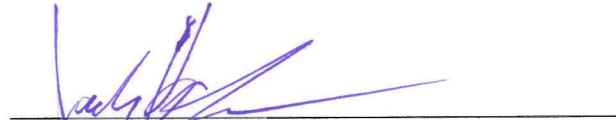
WHEREFORE, Opposer prays that Application Serial No. 85/358651 be rejected, and that Applicant's registration of the mark BLACKBIRD be denied and refused.

This Notice of Opposition is being filed electronically pursuant to the ESTTA system.

Respectfully submitted,

BLACKBIRD TECHNOLOGIES, INC.

Date: November 13, 2013



Jack E. Kerrigan

General Counsel

Blackbird Technologies, Inc.

13900 Lincoln Park Drive Suite 400

Herndon, VA 20171